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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,514	12/09/2003	Paul H. Lundeen	48231-01011	3727

7590 10/16/2007  
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EXAMINER

GREENHUT, CHARLES N

ART UNIT PAPER NUMBER

3652

MAIL DATE DELIVERY MODE

10/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/731,514	<b>Applicant(s)</b> LUNDEEN, PAUL H.	
	<b>Examiner</b> Charles N. Greenhut	<b>Art Unit</b> 3652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**I. Claim Objections**

1. In claim 24 Line 5, the word "and" should apparently be deleted for grammatical agreement with the phrase, "for use with" in line 1.

**II. Examiner Comment Regarding Claim Rejections Under 35 USC § 112 Previously Set Forth**

1. Based on recent decisions by the Board of Patent Appeals and Interferences, Office policy with regard to determining compliance with 35 USC 112 2<sup>nd</sup> paragraph in cases involving combination/subcombination issues has been amended since the previous Office action. Where an element has been previously set forth in a claim merely as the object of intended use and subsequent recitations require the presence of that element, those subsequent recitations will be interpreted to raise the presumption that the element is required by the claim despite initially recited the element only as an object of intended use terminology. For example, in claim 15 and 24 where Applicant recites an apparatus, intended for use with a vehicle, and then subsequently requires that the device have some connection or specific relationship to the vehicle, (e.g., positioned proximate [a part of the vehicle]), it will be presumed that the vehicle itself, along with all the recited elements thereof, is required by the claim. Claims 15, and 24 are therefore deemed to meet the requirements of 35 USC 112 2<sup>nd</sup> paragraph, however, with the presumption that the claims are directed to the combination of the vehicle and the loading apparatus. If Applicant requires any further clarification on this issue, Applicant is invited to initiate a telephone interview with the Examiner at the number listed below.

**III. Claim Rejections - 35 USC § 102**

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 15-16, 18, 20-25, 27, 29-34, 36, and 38-41 is/are rejected under 35 U.S.C. 102(b) as being anticipated by NEUFELDT (US 3,709,388 A).

1.1. With respect to claim(s) 15, 24 and 33, NEUFELDT discloses a vehicle (10), having a chassis (14), including a storage area (15), supported by a pair of opposite wheels (Fig. 1 no numeral) for movement on a support surface (ground), each wheel having a rim and tire (Fig. 1), the storage area (15) having a portion (e.g., right side viewed from Fig. 4) with a bottom (20), positioned at a height above the support surface (Fig. 4), and about the height of the rims (Fig. 4), the portion having a lower edge (below 50), the loading apparatus (35) comprising a chute (18b) having a slide surface (e.g., top surface in open position), positioned proximate the lower edge extending downwardly away therefrom (position A), toward a bottom edge of the chute (18b/21a interface), planar receiving member (21a) having a front edge (21a/18b interface) attached to the bottom edge of the chute (18b), and a rear edge (e.g., 21a/b interface) spaced from the front edge (21a/18b interface), defining a loading area (position A), connector arrangement (50/51) pivotally connecting the chute (18b) to a rear support member (25) of the vehicle proximate the lower edge (below 50), operation means (71) for moving the apparatus (35) between a deployed position (A) and a transfer position (C).

1.2. With respect to claim(s) 16, 18, 20-23, 25, 27, 29-32, 34, 36, and 38-41, NEUFELDT additionally discloses side walls (36) a retaining wall (21b) connected to and extending upwardly from a rear edge of the receiving member (21a), configured to retain material on the loading area (defined by 21a), the loading area disposed horizontally above the support surface (Fig. 4) in the deployed position (A), the receiving member (21a) making no contact with the support surface (Fig. 4), and joining the chute (18b) at an angle between 90° and 180°.

#### **IV. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 17, 19, 26, 28, 35, and 37 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over NEUFELDT.

1.1. With respect to claim(s) 17, 19, 26, 28, 35, and 37, NEUFELDT does not discuss specific dimensions of the sidewalls (36). Changing the dimension of the sidewalls involves merely the resizing of parts to obtain predictable results. For example, making the sidewalls (36) larger would allow the loading apparatus (35) to accommodate more material before the dumping operation, while making the sidewalls (36) smaller would facilitate depositing material into the loading apparatus (35). It would have been obvious to one having ordinary skill in the art to dimension the sidewalls appropriately for the material being collected.

**V. Response to Applicant's Arguments**

Applicant's arguments entered 8/14/07 have been fully considered.

1. Applicant has, by amendment, overcome the rejections previously set forth. Upon further consideration, however, a new grounds for rejection is presented above. Applicant's arguments are deemed moot in light of the new grounds for rejection presented herein.

**VI. Conclusion**

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
2. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.
3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.

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5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached at (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG



SAUL RODRIGUEZ  
SUPERVISORY PATENT EXAMINER